

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

FILED

SEP 26 2005

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY RS DEPUTY

DONNIE ALLEN McINTOSH,

Petitioner,

VS.

DON STEWART, Warden,

Respondent.

No. CIV-05-989-W

ORDER

On August 30, 2005, United States Magistrate Judge Doyle W. Argo issued a Report and Recommendation in this matter and recommended that the Petition filed by petitioner Donnie Allen McIntosh pursuant to 28 U.S.C. § 2254 and seeking a writ of habeas corpus be dismissed as untimely filed. McIntosh was advised of his right to object, and he timely filed an Objection to the Report and Recommendation.

Upon de novo review of the record, the Court concurs with Magistrate Judge Argo's suggested disposition of this matter. McIntosh's Petition is subject to the one-year statute of limitations established by the Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C. § 2244(d)(1), for the filing of federal habeas petitions by prisoners who are in state custody. Because the one-year period in this case expired in November 1998, McIntosh's Petition filed in August 2005 is time-barred unless McIntosh can establish that this limitations period has been tolled. The Court finds McIntosh not only has failed to demonstrate that he is entitled to statutory tolling under title 28, section 2244(d)(2) of the United States Code, but also has failed to demonstrate that extraordinary circumstances warrant equitable tolling in this instance.

Accordingly, the Court

(1) ADOPTS the Report and Recommendation issued on August 30, 2005; and

(2) DISMISSES McIntosh's Petition as untimely filed.

ENTERED this 26th day of September, 2005.


LEE R. WEST
UNITED STATES DISTRICT JUDGE